

tmd3574/vb
Return Date & Time:
July 29, 2009 9:00 AM

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X Chapter 13 Case No: 105-34281-353

IN RE:

NOTICE OF MOTION

DEXTER McKENZIE,

Debtor.

-----X

PLEASE TAKE NOTICE, that upon the within application, the Chapter 13 Trustee will move this court before the Honorable Jerome Feller, U.S. Bankruptcy Judge, at the United States Bankruptcy Court, Brooklyn Federal Courthouse, 271 Cadman Plaza East, Brooklyn, New York, Courtroom 3554, on July 29, 2009 at 9:00 AM, or as soon thereafter as counsel can be heard, for an Order pursuant to 11 U.S.C. Section 1307(c)(6) for cause, dismissing this Chapter 13 case and for such other and further relief as may seem just and proper.

Responsive papers shall be filed with the Bankruptcy Court and served upon the Chapter 13 Trustee, Marianne DeRosa, Esq., no later than three (3) days prior to the hearing date set forth above. Any responsive papers shall be in conformity with the Federal Rules of Civil Procedure and indicate the entity submitting the response, the nature of the response and the basis of the response.

Date: Jericho, New York
July 7, 2009

/s/ Marianne DeRosa
MARIANNE DeROSA, TRUSTEE
100 JERICHO QUADRANGLE, SUITE 208
JERICHO, NY 11753
(516) 622-1340

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X Chapter 13 105-34281-353
IN RE:

DEXTER McKENZIE,

Debtor.

APPLICATION

-----X

TO THE HONORABLE, JEROME FELLER, U.S. BANKRUPTCY JUDGE:

MARIANNE DEROSA, Chapter 13 Trustee in the above-captioned estate, respectfully represents the following:

1. The Debtor filed a petition under the provisions of 11 U.S.C. Chapter 13 on October 15, 2005, and, thereafter, MARIANNE DEROSA was duly appointed and qualified as Trustee.

2. The Debtor's Second Amended Plan (hereinafter to be referred to as "the Plan") dated September 12, 2006 and reflected on the Court's docket as number 53 was confirmed by this Court on October 5, 2006.

3. The Plan requires that during the pendency of this case, the Debtor will provide the Trustee with signed copies of filed federal and state tax returns for each year no later than April 15th of the year following the Tax period. Indicated tax refunds are to be paid to the Trustee upon receipt; however, no later than June 15th of the year in which the tax returns are filed.

4. The Debtor has not provided the Trustee with signed copies of filed state income tax returns, and refunds if any for the tax period 2007.

5. Furthermore, the Debtor has not provided the Trustee with signed copies of filed federal and state income tax returns, and refunds if any for the tax period 2008.

6. Additionally, the current monthly Plan payment amount is \$2,743.00. The total amount due under the Plan, through and including July 2009 is \$125,835.73. To date, the Trustee has received \$120,349.73. Therefore, the Debtor has defaulted under the terms of the Plan and is \$5,486.00 in arrears to the Trustee.

7. No prior application seeking the relief requested herein has been filed by the Chapter 13 Trustee.

8. The foregoing represents a material default by the Debtor with respect to a term of the confirmed plan and constitutes cause to dismiss this Chapter 13 case within meaning of 11 U.S.C. Section 1307(c)(6).

WHEREFORE, the Chapter 13 Trustee respectfully requests that this Court enter an Order dismissing this Chapter 13 case, and for such other and further relief as may seem just and proper.

Dated: Jericho, New York
July 7, 2009

/s/ Marianne DeRosa
Marianne DeRosa, Trustee

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X Chapter 13 Case No: 105-34281-353
IN RE:

DEXTER McKENZIE,

Debtor.

-----X
CERTIFICATE OF SERVICE
BY MAIL

This is to certify that I, Viola Basenese , have this day served a true, accurate and correct copy of the within Notice of Motion and Application by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last known address set forth after each name:

DEXTER McKENZIE
942 Rockaway Avenue
Brooklyn, NY 11212

STEPHEN B. KASS
225 Broadway; Suite 711
New York, NY 10007

SHARON MCKENZIE
4230 Thunderstone Circle W
Memphis, TN 38125

AMERICAN EXPRESS
C/O BECKET & LEE
PO Box 3001
Malvern, PA 19355-0701

This July 7, 2009

/s/Viola Basenese
Viola Basenese, Paralegal
Office of the Standing Chapter 13 Trustee
Marianne DeRosa, Esq.
100 Jericho Quadrangle, Suite 208
Jericho, New York 11753
(516) 622-1340

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IN RE:

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Debtor.

NOTICE OF MOTION, APPLICATION
and
CERTIFICATE OF SERVICE

MARIANNE DeROSA, TRUSTEE
100 JERICHO QUADRANGLE, SUITE 208
JERICHO, NY 11753
(516) 622-1340

revised 03/09/06